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SERVED August 24, 2005

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

J E RHOADS & SONS

FAA DOCKET NO. CP05EA0009
(Civil Penalty Action)

DMS NO. FAA-2005-20639 -5

**ADMINISTRATIVE LAW JUDGE'S ORDER
DENYING MOTION TO LIMIT HEARING**

On June 7, 2005, counsel for the Complainant filed a motion to limit the hearing in this proceeding to the issue of sanctions. If that relief were granted, the factual allegations of the complaint would be deemed admitted and the evidence presented at the hearing would consist only of material bearing on the question whether a civil penalty of \$2,000 – as requested by the Complainant – or some lesser sum is appropriate.

The motion is grounded on the claim that the Respondent failed to file a written answer to the complaint, as is required under Rule 209 of the Procedural Rules, 14 C.F.R. §13.209 (2005).

A review of the file indicates that the Complainant is correct in asserting that the Respondent did not timely file a written answer labeled as such. However, the file also shows that the Respondent addressed at least two letters to the responsible officials of the Complainant, setting forth in detail its position on the merits of the claims against it. The Procedural Rules allow an answer to be in the form of a letter. It is true that the correspondence in question was dispatched before, rather than after, the formal complaint was filed. Nevertheless, the Complainant could hardly have been in any doubt about the nature of the Respondent's defenses. That is what an answer is supposed to tell the Complainant. In this circumstance, the Complainant's pro forma allegation that "[p]reparation of Complainant's case is more difficult due to Respondent's failure to file an answer" rings rather hollow.

As Complainant has so often argued, the purpose of preliminary pleadings is to put one's opponent on notice of the evidence and arguments he will be required to meet. Respondent's pre-complaint correspondence has amply satisfied that criterion.

For the foregoing reasons, Complainant's motion to limit the hearing to the issue of the amount of the sanction to be imposed on respondent is denied.

SO ORDERED.

A handwritten signature in dark ink, appearing to read "Isaac D. Benkin", is written over a faint, circular official stamp.

Isaac D. Benkin
Administrative Law Judge

Attachment – Service List

SERVICE LIST

ORIGINAL & ONE COPY

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
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